



WWW.RIVKINRADLER.COM

25 Main Street
Court Plaza North, Suite 501
Hackensack, NJ 07601-7082
T 201.287.2460 F 201.489.0495

NANCY A. DEL PIZZO

Partner

(201) 287-2472

nancy.delpizzo@rivkin.com

April 11, 2024

VIA ECF

Hon. Jose R. Almonte, U.S.M.J.
United States District Court
District of New Jersey
Frank R. Lautenberg Courthouse Building
2 Federal Square
Newark, New Jersey 07102

Re: *EBIN New York, Inc. v. KISS Nail Products, Inc. et al.*
Civil Action No.: 2:23-cv-2369 (ES) (JRA)

Dear Magistrate Judge Almonte:

Together with Baker Botts LLP, we represent defendants, KISS Nail Products, Inc. and Yong Jin Chang ("Defendants"). On behalf of Defendants and plaintiff, EBIN New York Inc. ("Plaintiff"), we submit this joint letter following the Court's Order and Opinion, dated March 28, 2024, granting Defendants' Motion to Dismiss the Complaint without prejudice. (D.E. 49, 50).

Plaintiff has indicated that it will file an Amended Complaint, by or before the deadline of April 26, 2024. The parties jointly ask that the deadlines in the First Amended Scheduling Order (D.E. 38) be stricken *sine die*, and that the May 2 in-person status hearing before Your Honor be stricken. Defendants seek a brief extension of the permitted twenty-eight (28) days (allowable per the L.R. 6.1 extension) to forty-five (45) days from the date the anticipated amended complaint will be filed to file their response to the anticipated amended complaint. Plaintiff consents to this request. Further bases for this request follow.

Since the Complaint has been dismissed, there are no allegations upon which discovery responses may be based. Also, since Plaintiff represented it expects to file an amended pleading, the parties agree discovery should, for the time being, be stayed, and that the deadlines in the First Amended Scheduling Order (D.E. 38), which correspond to a pleading no longer in the case should be stricken. Per the Court's Order, Plaintiff's amended pleading must be filed within thirty (30) days of March 28, 2024 Order (D.E. 50), *i.e.*, by April 26, 2024. Once Plaintiff's amended pleading is filed, Defendants will need time to review it and file their response, whether by answer or motion, and depending on same, assess whether to seek a further stay of discovery.

Plaintiff believes that discovery should resume upon the filing of its Amended Complaint, and that the Parties can file a proposed Scheduling Order for the case, including discovery deadline dates, within 21 days of the filing of the Amended Complaint. Defendants believe that, considering the Court's

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dismissal of the Complaint, discovery should be stayed until the sufficiency of Plaintiff's anticipated Amended Complaint is decided (*i.e.*, if Defendants file a motion to dismiss the Amended Complaint, then until such motion is decided). However, Defendants would first like an opportunity to review the anticipated Amended Complaint before making an application to further stay discovery.

Accordingly, as stated above, the parties respectfully request that: (i) the deadlines in the First Amended Scheduling Order (D.E. 38) be stricken *sine die*; (ii) Defendants' deadline to respond to the anticipated Amended Complaint be extended to forty-five (45) days from the date of filing of the same; and either (a) discovery resumes upon the filing of an Amended Complaint or (b) discovery be stayed until Defendants respond to the Amended Complaint or, if Defendants subsequently seek a further stay of discovery, until such application is decided.

We thank the Court for its continued attention to this matter.

Respectfully submitted,

s/ Nancy A. Del Pizzo

Nancy A. Del Pizzo

c: Counsel of record via ECF

4890-0382-3542, v. 4

SO ORDERED:

A handwritten signature in black ink, appearing to read "Jose R. Almonte", is written over a horizontal line.

JOSE R. ALMONTE

United States Magistrate Judge

April 12, 2024